

IC 28-9-3

Chapter 3. Notice of Adverse Claims

IC 28-9-3-1

Duty of depository financial institution upon notice of adverse claim

Sec. 1. Except upon the conditions specified in sections 3 and 4 of this chapter, notice to a depository financial institution of an adverse claim does not require the depository financial institution to:

- (1) recognize the adverse claim in any manner; or
- (2) place a hold on, or otherwise restrict withdrawal of funds from, a deposit account.

As added by P.L.258-1989, SEC.2.

IC 28-9-3-2

Honoring order or instructions of depositor; liability

Sec. 2. Except as provided in sections 3 and 4 of this chapter, and notwithstanding IC 34-25-3-3 or any other rule or doctrine of law that:

- (1) would cause a depository financial institution to be accountable to an adverse claimant for any portion of any deposit account; or
- (2) would create or impose in favor of an adverse claimant a lien, charge, encumbrance, or other right with respect to a deposit account;

a depository financial institution may, without being liable in damages to any person, honor the order or instructions of a depositor or an agent of a depositor who is authorized under records maintained by the depository financial institution to control the depositor's deposit account.

As added by P.L.258-1989, SEC.2. Amended by P.L.1-1998, SEC.156.

IC 28-9-3-3

Adverse claim by one who is not a money judgment creditor of a depositor; accountability of depository financial institution; actions required of adverse claimant

Sec. 3. (a) This section applies to an adverse claimant who is not a money judgment creditor of a depositor.

(b) A depository financial institution may not be held accountable to an adverse claimant for funds in a deposit account that are claimed by the adverse claimant unless the adverse claimant:

- (1) serves on the depository financial institution written verified notice of the adverse claim stating in detail:
 - (A) the nature of the adverse claim, including the facts from which the adverse claim arose;
 - (B) that an action has been instituted in a court having jurisdiction in Indiana, or will be instituted within three (3) working days after receipt by the depository financial institution of the notice; and

- (C) that the action instituted will include all persons known by the adverse claimant to have a claim against or an interest in the deposit account;
- (2) serves on the depository financial institution notice of an adverse claim with a restraining order, an injunction, or another legal process that:
 - (A) directs the depository financial institution to place a hold on or otherwise restrict withdrawals from a deposit account;
 - (B) is issued or appears to be issued by a court having jurisdiction as a result of an action in which the depositor, the depository financial institution, and all persons who are known to the depository financial institution as having an interest in the deposit account are parties; and
 - (C) is accompanied by a court order providing for the recovery and collection by the depository financial institution of all costs and expenses, including attorney's fees, that have been or may be incurred by the depository financial institution as a result of the action; or
- (3) furnishes to the depository financial institution, in form and with sureties acceptable to the depository financial institution, a bond indemnifying the depository financial institution from payment of damages, costs and expenses, and attorney's fees incurred by the depository financial institution as a result of the:
 - (A) payment by the depository financial institution of the adverse claim;
 - (B) dishonor by the depository financial institution of any instructions from, or orders by, a depositor; or
 - (C) dishonor by the depository financial institution of other duties imposed upon the depository financial institution by contract or law.

As added by P.L.258-1989, SEC.2.

IC 28-9-3-4

Adverse claim by money judgment creditor attempting to garnish deposit account; accountability of depository institution; interrogatories; actions required of adverse claimant

Sec. 4. (a) This section applies to an adverse claimant who is a money judgment creditor attempting to garnish a deposit account.

(b) A depository financial institution may not be held accountable to an adverse claimant for funds in a deposit account that are claimed by the adverse claimant unless the adverse claimant has complied with subsection (d).

(c) A depository institution is not required to respond to interrogatories regarding deposit accounts at the depository financial institution unless the adverse claimant has complied with subsection (d).

(d) An adverse claimant shall do all of the following:

- (1) Provide the depository financial institution notice of garnishment proceedings, the unpaid amount of the judgment, and sufficient identifying information about the judgment

defendant to enable the depository financial institution reasonably to verify the judgment defendant as the depositor.

(2) Serve or cause to be served upon the depository financial institution an order to answer interrogatories.

(3) If the judgment defendant is an individual, serve or cause to be served upon the depository financial institution a copy of a notice, or an apparently valid order containing a notice, issued by a court that is directed to the judgment defendant (which is to be used by the depository financial institution to comply with IC 28-9-4-2(a)(3)) and that:

(A) states that the adverse claimant has or may have served or caused to be served upon one (1) or more depository financial institutions notice that may result in the placing of a hold on deposit accounts maintained by the judgment defendant, either individually or jointly with another person, in such depository financial institutions;

(B) states that under federal and state law certain funds are exempt from garnishment, including Social Security, Supplemental Security Income, veterans benefits, and certain disability pension benefits, and that there may be other exemptions from garnishment under federal or state law;

(C) states that if the judgment defendant or another person who maintains a deposit account jointly with the judgment defendant believes that some or all of the funds in the deposit account on which a hold may have been placed are exempt, such person is entitled to a prompt hearing for the purpose of presenting evidence to establish exemptions and seeking removal of the hold; and

(D) has attached to it a preprinted detachable form that may be used by the judgment defendant or other person maintaining a deposit account jointly with the judgment defendant in requesting the prompt hearing specified in clause (C) and that generally instructs such person as to how the form should be used in requesting this hearing.

(4) Serve or cause to be served upon the depository financial institution an apparently valid order issued by a court that expressly directs the depository financial institution to place a hold on a deposit account identified in the order whenever the conditions under subdivisions (1) through (3) are met.

(5) Pay to the depository financial institution five dollars (\$5) for each judgment defendant identified by the adverse claimant under subdivision (1). This fee may not be assessed as a cost to the judgment defendant in the action.

(e) An order issued under subsection (d)(4):

(1) is subject to the limitations under IC 28-9-4-2 concerning the duration of the restriction and the amount to be restricted; and

(2) may be terminated or modified to reflect valid exemptions of a depositor that the court has considered.

(f) A depository financial institution is not required to pay funds

in a deposit account to an adverse claimant unless the adverse claimant serves the depository financial institution with a final order in garnishment directing the payment of the lesser of:

- (1) the unpaid amount of the judgment specified by the documents and process; or
- (2) the balance in the account at the time of receipt of the documents and process.

As added by P.L.258-1989, SEC.2. Amended by P.L.197-1991, SEC.1; P.L.198-1991, SEC.1; P.L.1-1992, SEC.157; P.L.89-1998, SEC.1.

IC 28-9-3-5

Garnishment of deposit account; notice requirements

Sec. 5. (a) The information specified in section 4(b)(3)(B) through 4(b)(3)(C) of this chapter and the legend set forth in subsection (c) must be printed more conspicuously than the other information specified in section 4(b)(3) of this chapter. The information specified in section 4(b)(3)(B) through 4(b)(3)(C) of this chapter and the legend set forth in subsection (c) may be made more conspicuous in any way that highlights it in relation to the other information specified in section 4(b)(3) of this chapter, including, but not limited to, any of the following:

- (1) Capitalization, when the other information is printed in capitals and lower case.
- (2) Printing in larger type, boldface print, or differentiated typeface.
- (3) Printing in a contrasting color.
- (4) Underlining.

(b) Use of the following forms will constitute compliance with the notice requirements of section 4(b)(3) of this chapter:

NOTICE OF CERTAIN EXEMPTIONS

AND

YOUR RIGHT TO A PROMPT HEARING

It may be that the plaintiff has or will give notice to your bank or other persons holding property or assets for you of the intent to put a hold on certain accounts held by you, either individually or jointly with another person, including, but not limited to bank, share, and credit union accounts. Under Indiana law, this notice may already have resulted in the placing of a hold on those accounts. UNDER FEDERAL AND STATE LAW, CERTAIN FUNDS ARE EXEMPT FROM GARNISHMENT. THIS MEANS THAT THESE FUNDS MAY NOT BE TAKEN BY CREDITORS EVEN IF THEY HAVE BEEN DEPOSITED INTO YOUR ACCOUNTS. SOCIAL SECURITY, SUPPLEMENTAL SECURITY INCOME, VETERANS BENEFITS, AND CERTAIN DISABILITY PENSION BENEFITS CANNOT BE TAKEN. THERE MAY BE OTHER EXEMPTIONS UNDER STATE OR FEDERAL LAW. IF YOU OR ANOTHER PERSON WHO MAINTAINS A JOINT ACCOUNT WITH YOU BELIEVE

THAT ALL OR SOME OF THE FUNDS IN THESE ACCOUNTS ARE EXEMPT, YOU OR YOUR JOINT DEPOSITOR ARE ENTITLED TO A PROMPT HEARING IN THIS COURT TO PRESENT EVIDENCE TO ESTABLISH EXEMPTIONS AND TO SEEK REMOVAL OF THE HOLD. To obtain such a hearing, fill in the form marked "Exemption Claim and Request for Hearing" attached hereto and return it to this court either by mail or by personally bringing it to the court. A copy of that form should also be sent to plaintiff's attorney or to the plaintiff, if the plaintiff is not represented by an attorney, at the address set forth below. A prompt hearing will be scheduled by the court as soon as possible, but generally no later than 5 days (excluding Saturdays, Sundays, and legal holidays) after the completed form is received by the court. Please call the court at (____) _____ to find out when the hearing is scheduled. When calling the court, please have the cause number handy. The cause number is located at the top of the right-hand side of this document. After the hearing, the court will decide whether all or part of the funds in each account on which a hold has been placed or other accounts in which you have an interest may be taken by the plaintiff.

If a joint depositor or you do not request an early hearing, there will be a hearing at the time when you are ordered to appear. At that hearing, you and a joint depositor are entitled to assert any exemptions. However, if a joint depositor or you do not request an early hearing, each account on which a hold has been placed may not be released until the time you are ordered to appear.

EXEMPTION CLAIM AND REQUEST
FOR HEARING

THE HONORABLE JUDGE OF THE
COURT OF _____ COUNTY
ROOM NO. _____

(Address)

(City, State, Zip)

Re: Cause No. _____

I believe that all or part of the money in my account(s) that may have been frozen cannot be frozen since the account(s) contain exempt funds. I would like a hearing at the earliest time.

(Signature)

Check One:

_____ I am the judgment defendant.

_____ I maintain a joint account with the
judgment defendant.

(c) The notice required by section 4(b)(3) of this chapter may be placed on the reverse side of the order to appear directed to the judgment defendant, in which case the obverse side of the order to appear shall contain substantially the following legend: "See reverse

side for important information concerning your exemption and other rights.". However, in any case, the adverse claimant or an attorney representing the adverse claimant must serve or cause to be served this notice upon the judgment defendant in accordance with the applicable rules of court before or promptly after the notice is served upon the depository financial institution.

As added by P.L.258-1989, SEC.2. Amended by P.L.197-1991, SEC.2.